

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For purposes of the preliminary hearing and based upon the evidence presented to date, the Appeals Board finds as follows:

(1) The claimant has failed to establish that the alleged work-related accident of January 26, 1993, arose out of and in the course of his employment with the respondent. Therefore, the preliminary hearing decision of Administrative Law Judge John D. Clark, dated April 8, 1994, is affirmed.

In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record. K.S.A. 44-501(a).

"Burden of proof" means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not. K.S.A. 44-508(g).

In the case at hand, the facts surrounding the altercation on January 26, 1993, are in dispute. Should claimant's allegations be true, the injury arose out of and in the course of employment. Should the respondent's contentions be true, the injury did not arise out of and in the course of employment.

Despite witnesses to the incident, only the claimant and the respondent's owner testified at the preliminary hearing. However, a cold reading of the record fails to persuade the Appeals Board that the claimant's contentions are more plausible than the respondent's. Therefore, the Appeals Board affirms the decision of the Administrative Law Judge in denying benefits and holds, for preliminary hearing purposes, that the claimant has failed, at this time, to establish that the alleged accidental injury arose out of and in the course of his employment with the respondent.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark, dated April 8, 1994, is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of June, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Michael L. Snider, 2628 S. Oliver, Suite 104, Wichita, KS 67210
Gary A. Winfrey, 200 W. Douglas, Suite 630, Wichita, KS 67202-3089
John D. Clark, Administrative Law Judge
George Gomez, Director